

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: JOSEPH MARION HEAD, JR.,)
Movant.) M.B.D. No. 05-10281-RGS
)
)

MEMORANDUM AND ORDER

For the reasons stated below, Joseph Marion Head, Jr., will be granted leave to file a Notice of Appeal solely in C.A. No. 04-40084-RGS; his remaining requests seeking leave to file are denied; the May 2005 documents that he addressed to the Court of Appeals shall be transmitted to the Court of Appeals for the First Circuit; and the Annual Case Summary for Court that accompanied the December 2004 request to file motion shall be sealed.

Mr. Head is advised that the continued submission of frivolous documents could result in the imposition of monetary sanctions.

BACKGROUND

As previously noted in the Court's Order dated May 13, 2004, Mr. Head has filed dozens of actions in several district courts of the United States. See 5/13/04 Order, Head v. State of North Carolina, 04-10522-RGS. Mr. Head "has been involved in over 165 cases in the State of North Carolina and over 47 cases in the federal district courts, the majority of which were dismissed as either frivolously filed or filed in violation of pre-filing injunction orders issued by the North Carolina District Courts."

See Head v. Williamson, C.A. No. 5:03-0063 (S.D.W.V. June 30, 2003) (Proposed Findings and Recommendations, Docket No. 6); see also United States v. Head, No. 4:98CR102 (W.D.N.C. Nov. 19, 2002) (Memorandum and Order, Docket No. 87). Because of his harassing conduct of flooding the Western District of North Carolina with frivolous petitions and motions, Mr. Head was directed to cease such activity and is subject to a pre-filing injunction. See In re: Joseph Marion Head, Jr., No. 4:93CV16, 1993 WL 266949 (W.D.N.C. Jan. 27, 1993).

By Order dated September 17, 2004, the court instructed the Clerk of Court for the District of Massachusetts to docket no further filings submitted by Joseph Marion Head, Jr.,¹ without the prior approval of the court based on his history of frivolous filings. See 9/17/04 Order, Head v. Winn, C.A. No. 04-40084-RGS. On December 8, 2004, a second order was issued that (a) directed the clerk to return certain documents to Mr. Head and (b) directed Mr. Head to follow specific procedures when seeking leave to file a document in this Court.² See 12/8/04 Order, Head

¹Since 2003, Mr. Head has been committed to FMC Devens for mental treatment pursuant to 18 U.S.C. § 4245 (hospitalization of an imprisoned person suffering from mental disease or defect).

²The Memorandum and Order requires Head to obtain approval of the Miscellaneous Business Docket Judge before filing any documents with this Court by filing a written petition accompanied by a copy of the December 8th Memorandum and Order together with the papers sought to be filed and a certification under oath that there is a good faith basis for their filing.

v. Winn, C.A. No. 04-40084-RGS.

Now before the Court are dozens of letters, complaints, petitions, and miscellaneous documents from Mr. Head, the majority of which have been submitted for filing in utter disregard of the Court's Orders with respect to preconditions on filing in this Court. The documents continue to flow into the Court at such a fast pace that on one day alone, the Court received seven separate envelopes containing documents from Mr. Head. See July 20, 2005 Documents. In these documents, Mr. Head continues to challenge his continued confinement, the conditions of his confinement as well as his ability to file Notices of Appeal in several actions.

DISCUSSION

After reviewing the dozens and dozens of documents submitted by Mr. Head over the past several months, the Court has identified only seven documents in which Mr Head has made attempts to comply with the filing conditions imposed by the September and December 2004 Orders. These seven documents have been submitted in the form of motions directed to the Miscellaneous Business Docket judge seeking leave to file.³

³The Court will direct that the Annual Case Summary for Court that accompanies one of the requests be filed under seal and remain impounded until further order of the Court. Local Rule 7.2 sets forth the requirements for a motion to seal or impound. See District of Massachusetts Local Rule 7.2 (impounded and confidential materials). Because the Annual Case Summary for Court is a document containing personal data identifiers and

Because four of these documents are not accompanied by a copy of the December 8, 2004 Memorandum and Order, these motions are denied for failing to comply with the December 8, 2004 Memorandum and Order. A fifth document is accompanied by a copy of the requisite order, however, it does not contain a "certification under oath" that there is a good faith basis for its filing and is also denied for failing to comply with the December 8, 2004 Memorandum and Order.

A close examination of the remaining two documents, filed at the end of December 2004, reveals that Mr. Head is seeking to file a Notice of Appeal in the "sealed" action concerning his commitment pursuant to Section 4245 as well as Notices of Appeal in Civil Action Nos. 04-40084-RGS; 04-40090-RGS; 04-40103-RGS; and 04-40089-RGS.

The Court's records indicate the Mr. Head is represented by counsel in the "sealed" action concerning his Section 4245 commitment, and therefore, the Court will deny Mr. Head's request to file a Notice of Appeal in the "sealed" action.

The Court's records further indicate that Mr. Head has already filed Notices of Appeal in C.A. Nos. 04-40090-RGS; 04-40103-RGS; and 04-40089-RGS. See Head v. United States, et al., C.A. No. 04-40089-RGS, appeal dismissed, No. 05-1048 (May 10,

confidential information, the clerk will be directed to file it under seal.

2005); Head v. Unknown Parties, et al., C.A. No. 04-40090-RGS, appeal dismissed, No. 05-1049 (May 10, 2005); and Head v. America, et al., C.A. No. 04-40103-RGS, appeal dismissed, No. 05-1050 (May 10, 2005). Accordingly, the Court will deny Mr. Head's request to file a Notices of Appeal in C.A. Nos. 04-40090-RGS; 04-40103-RGS; and 04-40089-RGS.

Although the Court will decline to allow Mr. Head to file additional Notices of Appeal in C.A. Nos. 04-40090-RGS; 04-40103-RGS; and 04-40089-RGS, the Court will grant Mr. Head leave to file the Notice of Appeal solely in C.A. No. 04-40084-RGS.

Head is under a continuing obligation to obtain approval of the Miscellaneous Business Docket Judge before filing any documents with this Court by filing a written petition accompanied by a copy of the December 8th Memorandum and Order together with the papers sought to be filed and a certification under oath that there is a good faith basis for their filing.

Mr. Head is advised that the continued submission of frivolous documents could result in the imposition of monetary sanctions pursuant to this Court's inherent powers or under this Court's authority under Federal Rule of Civil Procedure 11. See Chambers v. Nasco, Inc., 501 U.S. 32, 46-50 (1991) (district court has the inherent power to manage its own proceedings and to control the conduct of litigants who appear before it through orders or the issuance of monetary sanctions for bad-faith, vexatious, wanton or oppressive behavior); accord United States

v. Kouri-Perez, 187 F.3d 1, 6-8 (1st Cir. 1999) (same); John's Insulation, Inc. v. L. Addison & Assocs., 156 F.3d 101, 109 (1st Cir. 1998) (same); Fed. R. Civ. P. 11(b)(1), (2) (court may impose sanctions on an unrepresented party if he or she submits a pleading for an improper purpose or if the claims within it are frivolous or malicious); Eagle Eye Fishing Corp. v. Dep't of Commerce, 20 F.3d 503, 506 (1st Cir. 1994) (pro se parties, like all parties and counsel, are required to comply with the Federal Rules of Civil Procedure); Pronav Charter II, Inc. v. Nolan, 206 F. Supp. 2d 46, 53 (D. Mass. 2002) (Rule 11 applies to pro se litigants) (citation omitted).

CONCLUSION

ACCORDINGLY, for the reasons stated above it is hereby ORDERED, Mr. Head's request for leave to file a Notice of Appeal in C.A. No. 04-40084-RGS is GRANTED; and it is further

ORDERED, Mr. Head's remaining requests seeking leave to file are DENIED; and it is further

ORDERED, the clerk is directed to (a) assign an M.B.D. number for these matters; (b) file Mr. Head's Notice of Appeal and accompanying financial information in C.A. No. 04-40084-RGS; (c) transmit to the Clerk for the First Circuit Court of Appeals the May 2005 documents addressed to the Court of Appeals; and (d) file under seal the Annual Case Summary for Court that

accompanied the December 2004 request to file motion.

SO ORDERED.

July 21, 2005
DATE

/s/ Richard G. Stearns
UNITED STATES DISTRICT JUDGE